

**BOARD OF MEDICINE STAFF GUIDE FOR RESPONDING TO CALLS
CONCERNING MEDICAL RECORDS**

Question: Is the medical record the property of the patient or health care provider?

Section 32.1-127.1:03 states that medical records are the property of the health care provider.

Question: How does a patient obtain a copy of his or her medical record?

NOTE: The answer depends on whether the patient wants a copy for his or her own purposes, or for the purpose of filing a lawsuit against the health care provider. As most of the calls we receive are from patients who want the record for their own purposes, that will be addressed first.

For a patient's own purposes (such as changing providers, second opinions, etc.):

Virginia law states that a request for copies of a medical record shall:

- be in writing, dated and signed by the person requesting the record
- identify the nature of the information requested
- include evidence of the authority of the requester to receive the record and identification of the person to whom the information is to be disclosed.

The provider must accept a photocopy, facsimile or other copy of the original signed by the requestor as if it were an original.

Within fifteen days of receiving the request, the health care provider must do one of the following:

- furnish the copy of the records;
- inform the requester that the records cannot be found or do not exist;
- if another health care provider has the record, provide that person's name, if known; or
- deny the request because release would be injurious to the patient, the requester has not established his authority to receive the records, or as otherwise provided by law.

Failure to pay any fee established by the health care provider is not a reason to deny furnishing the records.

Question: Can the health care provider charge for providing the record?

Yes. Section 54.1-11 (C) allows a practitioner to charge a reasonable fee, not in excess of the amounts authorized in Section 8.01-413. With certain exceptions for X-rays and copies from microfilm, the charge may not exceed fifty cents per page for up to fifty pages, and twenty-five cents a page thereafter. However, since the law requires a response with fifteen days, it appears the health care provider cannot withhold the record until the patient pays either the copying charge or any outstanding bill for services.

For filing a medical malpractice claim or lawsuit

If the records are sought for purposes of suing the health care provider for malpractice, Section 8.01-413 controls. Under that section, the health care provider is specifically authorized to charge a fee. If asked, we can provide a copy of that law.

Question: What must a provider do to contact patients if he sells or relocates his office?

Section 54.1-2405 of the Code of Virginia prohibits any provider from transferring records upon the sale of a practice or relocation of an office until he has first attempted to notify patients of the transfer by mail at the individual's last known address, and by the publication of a notice in a newspaper. The notice to patients must include charges, if any, for the provision of records.

Copies of the laws may be obtained at <http://leg1.state.va.us>, under the heading Searchable Databases, Code of Virginia

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